

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

WILLIAM P. ERICKSON, on behalf of
himself and all others similarly situated,

Plaintiff,

V.

CREDIT BUREAU SERVICES, INC.,
and DANIEL A. MARTIN,

Defendants.

8:11CV215

MEMORANDUM AND ORDER

This matter is before the court on the defendants’ motion for clarification of the court’s November 1, 2011, Memorandum and Order denying defendants’ motion to dismiss, Filing No. [42](#). This is a purported class action for damages and injunctive relief for violations of the Fair Debt Collection Practices Act, [15 U.S.C. § 1692](#) *et seq.* (hereinafter “FDCPA” or “Act”) and the Nebraska Consumer Protection Act (“NCPA”), [Neb. Rev. Stat. § 59-1601](#) *et seq.*

In their motion, the defendants seek clarification of the court’s finding that the plaintiff’s complaint stated a plausible claim for relief. Specifically, defendants contend that certain language in the order is “tantamount to a finding of the existence of a question of fact that could arguably preclude summary judgment in favor of the Defendants at a later date.” Filing No. [42](#), Motion at 3. The language at issue is the sentence that reads: “The collection letters at issue are not merely susceptible of an ingenious misreading, and could be considered misleading from the perspective of an unsophisticated consumer.” Defendants ask the court to “clarify the sentence to confirm that the phrase is merely dicta

and/or does not constitute the law of the case, and that it has no bearing on any future motions that may be before the Court in this case.” Filing No. [42](#), Motion at 2.

The court finds clarification is not necessary. A finding that a claim is plausible is not a finding that it is certain or even probable. The court’s order does nothing more than deny a motion to dismiss for failure to state a claim on the face of the pleading. Factual issues await further development. In the context of the opinion as a whole, the court expresses no legal conclusions, nor does it make factual findings. The court would find any reliance on the court’s statement as support for a summary judgment motion to be without merit. In view of the foregoing, further clarification is not necessary. Accordingly, the court finds the defendants’ motion should be denied.

IT IS ORDERED that the defendants’ motion to clarify (Filing No. [42](#)) is denied.

DATED this 30th day of November, 2011.

BY THE COURT:

s/ Joseph F. Bataillon
Chief District Judge

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